

**San Francisco County
Pesticide Regulatory Program
2007/2008 Performance Evaluation Report**

**California Environmental Protection Agency
Department of Pesticide Regulation
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Performance Evaluation of the San Francisco County Agricultural Commissioner Pesticide Use Enforcement Program

This report provides a performance evaluation of San Francisco County Agricultural Commissioner's (CAC's) pesticide use enforcement (PUE) program for the fiscal year (FY) 07/08. The assessment evaluates the performance of goals identified in the CAC's enforcement work plan as well as the program's adherence to Department of Pesticide Regulation (DPR) standards as described in the Pesticide Use Enforcement Standards Compendium.

I. Summary Report of Core Program Elements

A) Restricted Materials Permitting:

The restricted materials permitting program (RMPP) element was found not to meet DPR standards and Enforcement Work Plan (EWP) goals for FY 07/08.

B) Compliance Monitoring

Illness investigations were completed effectively and met both DPR standards and EWP goals for FY 07/08. In contrast, the inspection component of the compliance monitoring program element was found to be deficient and did not always meet DPR standards and EWP goals for FY 07/08.

C) Enforcement Response

The Enforcement Response program element was found to meet DPR standards and EWP goals for FY 07/08; however, a number of deficiencies were found associated with following the Enforcement Response Regulations (ERR) and the county did not always meet DPR standards and EWP goals for FY 07/08.

Summary Statement: San Francisco County's overall PUE program for FY 07/08 has improved with the hiring of an Agricultural Commissioner in March, 2007, and was more effective at delivering the local PUE program of the state since the county staff person in charge of the PUE program became licensed (May 2007). There were still a number of deficiencies where the PUE program needed improvement, and the appointment of the new commissioner revived the PUE program. However, Mr. Paulsen decided to seek employment with another county (November 2007) and was commissioner for only a very short period. A new CAC will begin working in the county in October 2008 and this should again revive the PUE program. The following is an assessment of these deficient areas needing improvement:

- All PUE planning and implementation has been carried out by a single staff member that has relatively little experience with PUE (passed his "Pesticide Regulation" and "Environmental Monitoring and Investigations" licensing exams in May of 2007).
- Individual Restricted Material Permit (RMP) files are disorganized, there is insufficient space for filing RMP information and RMPs have most of the

required information, but lack information required by the California Code of Regulations (CCR)(licensing/certification information, sensitive sites and mitigation language).

- RMP maps are either good, mediocre or there are no maps for the RMP file.
- The county has one inspector performing pesticide inspections. Oversight of the PUE program by the county could not be performed when there was no commissioner present and when this person is not in the office for extended periods of time.
- PUE inspections are at times incomplete, inadequate, wrong forms were used and when non-compliances were discovered the county did not take appropriate compliance/enforcement action as required by the ERR in FY 07/08.

The same deficiencies discovered in the San Francisco FY 06/07 PUE program were not sufficiently addressed for FY07/08, as discussed in this document, and have resulted in the RMPP and Compliance Monitoring components remaining deficient. The Enforcement Response component of the PUE program was found to adequately meet DPR standards and EWP goals for FY 07/08; however, a number of deficiencies were found associated with following the ERR and meeting EWP goals for FY 07/08. The hiring of the new commissioner (March 2007), and the passing of the “Pesticide Regulation” and “Environmental Monitoring and Investigations” licenses exams by the PUE staff person (May 2007), significantly improved the PUE program. However, there was no oversight to direct the PUE program inspector when the previous Commissioner, Mr. Paulsen, quit (November 2007), up until the new CAC was hired in October 2008.

II. Assessment of Core Program Effectiveness and Work Plan Goals

A) Restricted Materials Permitting:

DPR and the CACs must assure the RMPP system protects people and the environment while allowing for effective pest management. For effective implementation of the permit system, CACs must continuously evaluate the hazards posed by proposed applications and the knowledge of the restricted permit applicant. The RMPP element was found not to meet DPR standards and EWP goals.

1. Permit Issuance

The San Francisco Department of Public Health (SFDPH) permit issuance procedures and performance were evaluated through observation and interviews with relevant staff. The county issued 6 RMPs (1 agricultural permit and 5 non-agricultural permits), reviewed 19 Notice of Intents (NOIs) and issued 9 Operator Identification Numbers during the FY 07/08. The RMPP meets DPR standards; however, there are concerns over program quality for the following reasons:

- No checklist had been developed to assure consistency in permit and operator identification issuance.

- The CAC quit his post in November 2008 and will not be replaced until October 2008 so there has been no program oversight by a CAC within this period.
- All PUE planning and implementation has been carried out by a single staff member that has relatively little experience with PUE (passed his “Pesticide Regulation” and “Environmental Monitoring and Investigations” licensing exams in May of 2007).
- A single staff member does not appear to be sufficient to cope with the workload (shown, for example, by pest control companies being unable to register in San Francisco County during much of December 2007 through January 2008).
- Individual Restricted Material Permit (RMP) files are disorganized, there is insufficient space for filing RMP information and RMPs have most of the required information, but lack information required by the California Code of Regulations (CCR)(licensing/certification information, sensitive sites and mitigation language).
- RMP maps are either good, mediocre or there are no maps for the RMP file.

Recent Corrective Measures

- A CAC was hired by the county to adequately administer and monitor RMP issuance and RMPP management in March 2007 and will again fill this post in October 2008.
- A licensed inspector began to actively oversee the RMPP in May 2007 and signs RMPs.
- NOI review and Pre-application inspection approvals are now conducted in compliance with California laws and regulations.

2. Site Evaluation

The RMP site evaluation should utilize the CAC’s knowledge of pesticide hazards, local conditions, cropping, and fieldwork patterns, as well as handler, permittee and advisor compliance histories to address local, multi-county, and/or regional issues. The site evaluation element of the RMP program does not meet DPR standards for FY 07/08 the following reason:

- Individual Restricted Material Permit (RMP) files are disorganized, there is insufficient space for filing RMP information and RMPs have most of the required information, but lack information required by the California Code of Regulations (CCR)(licensing/certification information, sensitive sites and mitigation language).
- RMP maps are either good, mediocre or there are no maps for the RMP file.
- Oversight of the RMPP was performed in compliance with California laws and regulations for only the period between July 2007 and November 2007.
- The county has not upgraded from hand written RMPs to the RMPP in April 2007 as stated in last years EWP and is scheduled to be connected to the RMPP by June 2009 and the Restricted Materials Management System (RMMS) by the 2010 permit season.
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Recent Corrective Measures

- The county will reportedly upgrade from hand written RMPs to the RMPP in June 2009 and to RMMS in August 2010.
- A commissioner was hired by the county to adequately administer and monitor RMP issuance and RMPP management from July 2007 to November 2007 and a new CAC was hired in October 2008.
- A licensed inspector began to actively oversee the RMPP in May 2007.

B) Compliance Monitoring

DPR's strategic goal to reduce risks to people and the environment depends on an effective and comprehensive compliance monitoring program. Inspections and investigations allow CACs to identify and respond to potential hazards to the workers, the public, and the environment. To assure an effective compliance-monitoring program, CACs must enforce broad-based and comprehensive inspections, identify the number of inspections necessary to maintain an enforcement presence effective at deterring violators, and conduct thorough and timely investigations. The compliance monitoring program element was found to meet DPR standards and EWP goals.

1. Inspections

An effective inspection strategy encompasses a broad spectrum of pesticide handling situations and responds quickly to local issues. The focus should be on a balance between planned and spontaneous inspections. Inspections should have broad coverage, and also focus on areas of the greatest risk. The inspection program did not meet DPR standards and was deficient for the following reasons:

- There has been no centralized review of inspection activity or PUE program oversight and monitoring by a commissioner on a regular basis.
- All PUE planning and implementation has been carried out by a single staff member that has relatively little experience with PUE (passed his "Pesticide Regulation" and "Environmental Monitoring and Investigations" licensing exams in May of 2007).
- The PUE inspector's inability to recognize and document violations observed during inspections continues and affects inspection quality. Data fields were left blank, some situations classified as violations were not actually violations and some violations described in the narrative section were not recorded as violations. Additionally, the relatively low-rate of non-compliances detected during inspections is a concern.
- Inspections were found to be incomplete, the wrong form was used on some inspections, inaccurate boxes were checked on inspection forms and inspections were turned in even though no pesticide was applied.

Recent Corrective Measures

- A CAC was hired by the county to adequately administer and monitor PUE program management in March 2007, but left the county in November 2007, and a new CAC was hired in October 2008.

- A licensed inspector began to actively oversee the PUE program in May 2007.
- A greater variety of PUE inspections (past inspection target strategy issue) have been conducted in the county by a licensed inspector.
- A number of binders have been used in an attempt to organize inspections and follow-up inspections for compliance tracking.

2. Investigations

DPR and CACs have the responsibility to investigate episodes that may involve potential or actual human illness, injury, property damage, loss or contamination, and environmental effects allegedly resulting from the use, or presence of a pesticide in a timely and thorough manner. The investigation program meets DPR's standards and EWP goals for the following reason:

- Investigations are generally well written, conducted in a timely manner, and complete.
- The PUE staff person appears to investigate all complaints as required.
- Based on the results of an illness investigation, the CAC issued the first Notice of Proposed Action (NOPA) for a Food and Agriculture Code (FAC) 12973 violation, use of a pesticide in conflict with label requirements (Class A violation for \$1,000) in 2007.

C) Enforcement Response

To realize the full benefit of the comprehensive and effective statewide pesticide regulatory program, DPR and the CACs must apply our enforcement authority fairly, consistently, and swiftly. Our joint enforcement response should emphasize worker and environmental safety and promote deterrence. The enforcement response program element was found to meet DPR standards and EWP goals; however, a number of deficiencies have been noted that affect the efficiency of the program and those issues are listed below:

- The county did not initiate appropriate enforcement/compliance actions when violations were identified associated with non-compliances found during inspections, as required by the ERR.
- No Decision Reports have been generated, as required by the ERR, associated with non-compliances discovered on inspection forms when an enforcement action was not taken.
- The PUE program in San Francisco County had not been monitored regularly by a commissioner for FY 0708.

Recent Corrective Measures

- A commissioner was hired by the county to adequately administer and monitor the PUE program in March 2007 until November 2007.
- A licensed inspector began to actively oversee the PUE program in May 2007.
- A partial tracking system has been set up for follow-up or enforcement/compliance tracking.
- The CAC issued the first NOPA for a Food and Agriculture Code (FAC) 12973 violation, use of a pesticide in conflict with label requirements (Class A violation of \$1,000 in 2007.

III. Corrective Actions Previously Identified in FY 05/06

- A licensed inspector did not issue RMPs and a checklist had not been developed to assure consistency in permit and operator identification issuance.
- The county had not implemented a pre-application site inspection plan and it had not established an evaluation process to measure the effectiveness of pre-application inspections.
- The county had targeted fumigation activities associated with low income and immigrant populations and single resident occupancy units involving pest infestations. The inspections did not appear to have discovered non-compliances associated with the fumigations. Targeted inspections were being conducted on this activity in greater numbers than any other type of inspection by the county even though there are no apparent non-compliance issues (inadequate targeting strategy).
- The ERR had not yet been implemented. No Decision Reports had been generated associated with non-compliances discovered on inspection forms in county files, and no tracking system had been established for follow-up or enforcement/compliance tracking.

IV. Recommended Corrective Actions

DPR and the inspector responsible for the county PUE program had jointly identified the following corrective actions:

Restricted Materials Permitting:

The issues identified in section II (A)(1) of the FY 05/06 evaluation regarding permit issuance have been addressed in the following manner:

- The county has ensured that a licensed inspector issues all RMPs since May 2007.
- The county has implemented an effective Pre-Application Site Evaluation strategy that focuses on application sites that have the greatest potential for hazard since a commissioner was appointed in March 2007 and all inspections are conducted by a licensed inspector.

Compliance Monitoring Inspections:

- DPR had requested that the county modify the current inspection strategy since no non-compliances had been detected from previous inspections. DPR will assist the county by providing inspection strategy guidance. The licensed inspector had stated that he would evaluate the targeting strategy for inspections. DPR had discussed that the use of restricted materials at other sites can be inspected as part of a change in targeting strategy, and have formulated a plan for additional inspections associated with landscapers and other structural operations in San Francisco.
- The County was to develop an effective inspection strategy, and include it in the FY 06/07 EWP. The strategy was to be communicated to the county management.

- DPR provided additional training and direction to the PUE inspector to address identified issues.
- A previous licensed inspector with San Francisco County created a binder that separated and organized PUE inspections and compliance monitoring documents. The inspector had stated that it would be reestablished. This system still needs attention, organization and refinement and the DPR EBL has made suggestions on how to create an efficient tracking system to the PUE inspector.

Investigations

- The CAC, with assistance from DPR, will provide training in investigative techniques and evidence collection. County management will more actively supervise investigations.
- A licensed inspector will conduct all investigations now

Enforcement Response:

- The ERR is to be implemented and followed immediately. Decision Reports or civil penalty actions are to be generated associated with non-compliances discovered on inspection forms in county files. A tracking system should be established for follow-up or enforcement/compliance tracking.
- The county shall ensure that a licensed inspector is involved with all aspects of the PUE program. Also, the ERR implementation will be conducted by a licensed inspector who is actively overseeing the enforcement/compliance action decision-making process.

V. Non-Core and Desirable Activities

- The CAC's staff conducted a coordinated outreach effort with the U.S. Environmental Protection Agency (USEPA) in the China Town District of San Francisco to search for unregistered pesticides, specifically pesticidal chalk and mothball products.
- The county developed a three year work plan (EWP) that focuses on periodic field inspections and coordination with county HAZMAT and Housing inspectors, proper permit issuance and appropriate enforcement actions.
- The CAC has jointly developed a pesticide compliance newsletter segment with their county HAZMAT program.
- The CAC has assisted in presentation of a compliance workshop for non-ag hazardous materials users with their county HAZMAT program.
- The county will develop a more comprehensive outreach program to capture all maintenance landscapers by providing them with outreach associated with registration and pesticide use requirements.